

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| STEVEN M. JACOB, |) | 4:10CV3073 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | MEMORANDUM |
| |) | AND ORDER |
| ROBERT HOUSTON, |) | |
| |) | |
| Respondent. |) | |

This matter is before the court on Petitioner’s Objection to the court’s summary of his claims. (Filing No. [11](#).) Also pending is Respondent’s Motion to Extend and for Clarification of Claims. (Filing No. [17](#).)

In his 139-page Objection, Petitioner asks the court to correct the summary of his claims in the court’s June 22, 2010, Memorandum and Order and in the court’s August 2, 2010, Memorandum and Order. (Filing No. [11](#).) In those Orders, the court liberally construed Petitioner’s 143-page Petition for Writ of Habeas Corpus (“Petition”) to allege six claims for relief. (Filing No. [6](#) at CM/ECF pp. 1-2; Filing No. [10](#).) The court condensed and summarized these claims for clarity and permitted them to proceed. (Filing No. [6](#) at CM/ECF p. 3; Filing No. [10](#).) Petitioner objects to the court’s summary and asserts that he made seven claims for relief. (Filing No. [11](#) at CM/ECF p. 1.)

The court has carefully reviewed the Petition and Petitioner’s Objection. The court agrees that Petitioner alleged seven claims in his Petition. (Filing No. [1](#) at CM/ECF pp. 138-140.) However, the court condensed and summarized those claims into six claims for relief. Specifically, the court consolidated Petitioner’s seventh claim, that “Nebraska’s second degree murder statute is facially unconstitutional,” into the court’s summarized Claim Six. The court summarized Claim Six as follows:

Claim Six: Petitioner's conviction violated his Fourteenth Amendment right to due process of law *because* (a) Petitioner's conviction was obtained by the prosecution's failure to disclose to the Petitioner a medical expert's deposition which was favorable to the Petitioner and Petitioner did not receive laboratory reports in time to cross-examine appropriate witnesses; (b) **Nebraska's Second Degree Murder statute fails to place the burden of proof of the one fact that can increase the punishment on the State;** and (c) Petitioner was denied the right to appeal.

(Filing No. [10](#) at CM/ECF p. 2 (emphasis added); *see also* Filing No. [7](#) at CM/ECF p. 4.) Indeed, the court's summary of the Petition includes Petitioner's seventh claim.

IT IS THEREFORE ORDERED that Respondent's Motion to Extend and for Clarification of Claims (filing no. [17](#)) is granted. Respondent shall have until November 3, 2010, to file state court records and an answer.

DATED this 13th day of October, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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